

Childhood, Law, and the Child Soldier Phenomenon

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ABSTRACT

Child soldiers have become an increasingly widespread phenomenon in modern warfare. The international community has attempted to address the issue through various amendments to current international humanitarian law. Unfortunately, they have been slow to succeed due to weak language and the inability of sovereign state governments to carry out the law. The trouble with addressing the issues lies with attempting to universalize a very westernized definition of childhood. Childhood is a social construct. In fact, most traditional societies delineate the end of childhood by the responsibilities an individual is in charge of or by marriage. It is mostly European and western societies that define a child by age. However various humanitarian organizations have trouble acknowledging that there are children who voluntarily participate in the atrocities that characterize war. They are firm believers in advocating the rights of the child, a heavily westernized concept. They are determined to absolve all children combatants of all war crimes instead of looking further into the problem to differentiate the perpetrators from the victims. In doing so they rob the local victimized families of justice and closure, instead subjecting them to sensitization and reintegration efforts. The question then becomes to what extent are international documents, like the United Nations Convention on the Rights of the Child, that emphasize a western definition of childhood ineffective in eradicating the problem of and improving the reintegration of child soldiers?

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BACKGROUND

What are Child Soldiers and are they a new phenomenon?

Child soldiers are children under the age of eighteen who are involved in military conflict. Recently they have become both the most common targets as well as the most common perpetrators of violence. What appears to be a new phenomenon however isn't. It is an occurrence that has been continuously repeated in the history of almost all civilizations. In the middle ages Italians used young soldiers in battle. The youth would follow knights on foot and fight by their sides. In Europe, children were enlisted into the army. The children's crusades of 1212 involved thousands upon thousands of young boys and girls ranging from 10 to 18 years of age¹. They had joined the movement with religious fervor and avid belief that God would deliver them to Jerusalem. Whether there was truth in this sentiment or not, the reality of the situation was that most of them were unable to deal with the harsh conditions of their travels and died on their long marches across the country. Even in France, Napoleon's army was full of boys as young as 12 years old. Taking a look at more recent history, boys as young as 14 were unknowingly enlisted in the American and British armies during WWII and in an effort to escape the Nazi firing squads, youth entered into the Polish and French armies. Even China used children as young as 8 in the red army during the Cultural revolution to carry out violent acts of extremism against dissenting populations².

The difference between the children enlisted in armed conflict then and the children enlisted in armed conflict now is that at that time, the children were a part of formal, recognizable militias that were associated with specific countries. The militias that child soldiers are in now are

¹ Honwana, Alcinda. *Child Soldiers in Africa*. University of Pennsylvania Press, 2006. pg. 27

² Honwana, pg. 27

not formally recognized state armies but rather rebel insurgencies that make use of mostly guerrilla tactics to incite fear and violence in the civilian populations. With only their end goals in mind, these insurgencies have little care for the children they use outside of their effectiveness in furthering the goals of the rebel group.

Old Wars versus New Wars

There are only two basic differences in the fighting that happened in the past, and the fighting that happens now. The first is that there is more scrutiny involved in fighting today. There is more media attention and the problem of children being involved in armed conflict is being given more attention as globalization increases. The second difference is that the war-torn regions have shifted. Previously the use of children as soldiers was more prevalent in Europe and China, today children are involved in both the armed forces as well as the guerrilla movements of major conflict zones that include parts of Africa, Latin America, South East Asia, and South Asia such as Mozambique, Angola, Sierra Leone, Cambodia, the Philippines, Colombia, Peru, Guatemala, and especially Sri Lanka³.

Some academics like Mary Kaldor also argue that the nature of warfare itself has shifted since the 1900s. One of the big changes has been in the actors. According to Kaldor, the old wars were fought by “the regular armed forces of states”⁴. The new wars, however, are fought by “varying combinations of networks of state and non-state actors”⁵. Kaldor also emphasizes that the goals of the old wars and the new wars differ. Previously wars were fought for “geopolitical

³ Ibid

⁴ Kaldor, Mary. "In Defence of New Wars." *Stability: International Journal of Security and Development* 2, no. 1 (March 07, 2013): 1-16, pg. 2

⁵ Kaldor, pg. 16

interests or for ideology (Democracy or socialism)” however now they are fought “in the name of identity”⁶. Honwana agrees with her sentiments by reiterating how warfare and political violence has changed over the last few decades. According to Honowan’s research, in the past there was much more organizational warfare where soldiers were fighting soldiers. Now, however, there are more civil wars happening within a country’s own borders. Not to mention that these civil wars are fought seemingly lawlessly with “irregular fighters, and [which] target defenseless civilians”⁷. Like Kaldor, she too believes that there are more non-state actors involved in the new war conflicts. She suggests that the change has led to the large-scale recruitment of young under-aged combatants who commit inexplicable acts of violence during their time as child soldiers⁸.

There is however plenty of debate surrounding this idea of new wars versus old wars. Some like Max Boot believe that what Kaldor calls old wars was actually the new normal until recently. According to Boot, for most of human history “warfare has primarily been carried out by bands of loosely organized, ill-disciplined, and lightly armed volunteers” much like today’s modern guerrillas and terrorists⁹. In fact the organizational armies of Europe only came about “after 3100 B.C. in Egypt and Mesopotamia”¹⁰. The 10,000 years before then was all nomadic, unconventional forms of warfare. Much like we see in the developing world today.

Why are Child Soldiers involved in modern warfare?

Over the years, academics who have studied the phenomenon of child soldiers in the armed forces have come to a variety of conclusions as to why children are used in such dangerous

⁶ Ibid

⁷ Honwana, pg. 27

⁸ Ibid

⁹ Boot, Max. “The Evolution of Irregular Warfare.” Feb. 2013. Accessed Nov, 2016, pg. 100.

¹⁰ Boot, pg. 100

organizations. Honwana points out that some believe that the involvement of child soldiers is a necessity because civil war takes a toll on the amount of usable manpower, and guerrilla organizations have no choice but to replenish their reserves by enlisting children¹¹. Others believe that environmental and social push factors destroy opportunities for jobs, education, and growth, leaving no alternative but enlistment. Still others focus on child soldiering as a form of cultural expression. They say that becoming a child soldier is an example of “traditional cultural forms of initiation and rites of passage to adulthood”¹².

According to Honwana, some analysts such as Rachel Brett, hone in on the benefits children can provide guerrilla and rebel groups as soldiers thereby claiming that child enlistment is not a necessity so much as it is a sought-after asset¹³. They believe that there is a “systematic preference for children as soldiers” because children are thought to be “especially susceptible to ideological conditioning”¹⁴. Essentially by rebel standards, children are easier to manipulate and control than adults. They are more readily able to be programmed to feel little to no fear in combat or have an adverse reaction to heinous military actions, they can be trained to dehumanize the enemy so that war is just that, war, and finally some leaders and abductors are of the opinion that children “possess excessive energy so that, once trained, they [are able to] carry out brutal attacks with greater enthusiasm than adults”¹⁵.

Honwana differs from the scholar she cites. She does not believe that “armies of children” were created because of lack of man power, by chance, or because of ease of indoctrination¹⁶. She

¹¹ Honwana, pg. 44

¹² Ibid

¹³ Rachel Brett, “A Time for Peace: A Time to Act,” *Peace and Conflict: Journal of Peace Psychology* 6, no. 1 (2000): 89.

¹⁴ Honwana, pg. 44

¹⁵ Ibid

¹⁶ Ibid

believes that their creation was an “intentional and well-thought-out strategy to use and manipulate children into warfare”¹⁷. Her reasoning behind this statement is based on the fact that the occurrence of child soldiers is not limited to one single group or one isolated incident. It had a place in warfare in Europe and has reemerged across the world in most war-ravaged areas and combat zones. The documented cases for Cambodia, Uganda, Sierra Leone, Angola and Mozambique are unnervingly similar with respect to child soldiers.

Where Honwana places the blame for child soldiers on the recruiters and rebel groups, another academic, David Rosen, turns that explanation on its head with the claim that the vast majority of child soldiers are not forcibly recruited or abducted into armed forces and groups¹⁸. He believes that much of the debate surrounding child soldiers has been heavily influenced by the humanitarian rhetoric and that in actuality, children should not be seen as innocent and unassuming as they are portrayed. He bolsters his claims with examples from Liberia, Palestine, and Mozambique.

¹⁷ Ibid

¹⁸ Rosen, David M. "Child Soldiers, International Humanitarian Law, and the Globalization of Childhood." *American Anthropologist*, New Series, 109, no. 2 (2007): 296-306, 298.

CHILDHOOD

The Child, Childhood, and Differentiating Factors

In order to tackle the issues surrounding the phenomenon of child soldiers, it is important to first define the word child and understand the meaning of childhood. Jean-Jacques Rousseau, a Swiss born French philosopher, asserted in his writings that a child was a “moral innocent, close to Nature and deserving a freedom to express herself”¹⁹. According to Article 1 of the United Nations Convention on the Rights of the Child (CRC), “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”²⁰. With respect to the rights of a child, according to the 1959 Declaration of the Rights of the Child, on which the CRC is modeled, “the child, by reason of his physical and mental immaturity, needs special safeguards and care”²¹. The combination of these three statements suggests that a child deserves rights, is inferior to adults, and is in constant need of protection, at least until the age of 18. This notion of inferiority and determination of a child via age is most prominent in western societies. Here, children are assumed to evolve through set stages of development, and childhood stands in opposition to adulthood²².

The sentiments about children displayed in western societies are often used as a base in various international documents addressing children. According to Alcinda Honwana, in international humanitarian law, children are perceived to be “pre-social” beings that need to be kept away from the difficulties surrounding the adult world²³. David Rosen asserts that this view

¹⁹ Archard, David. *Children: rights and childhood*. 3rd ed. Abingdon, Oxon: Routledge, Taylor & Francis Group, 2015. pg. 34

²⁰ Archard, pg. 19

²¹ Ibid, pg. 20

²² Honwana, pg. 41

²³ Ibid

of children is built from the humanitarian viewpoint. These organizations believe children are supposedly in this transitional phase, “in the process of becoming instead of being”²⁴. Consequently, children are automatically considered to be less knowledgeable than adults and in need of being nurtured and enlightened. However, the description of childhood in international law documents such as the UN Convention on the Rights of the Child and the 1959 Declaration of the Rights of the Child is delivered through a very western-Eurocentric, middle class view that is not often accepted around the world²⁵. In fact Rosen further states that the humanitarian perspective clashes with many of the more local understandings of young individuals confronted with civil war²⁶.

Authors like Alcinda Honwana, Allison James, and Alan Prout all point out the importance of understanding childhood as a social construct. They assert that “notions of childhood cannot be understood in universal terms” because they have different meanings in different societies and cultures²⁷. How childhood is defined can even differ based on class and gender relations. The concept of childhood is usually in a state of flux, evolving and changing over time as societies shift and new identities emerge. For example, in medieval times, the age of majority for a boy was set based on his ability to bear arms. As the weapons grew heavier and more elaborate, making it more laborious and difficult to hold them, the age of majority for the boy increased in accordance.²⁸ Harry Hendrick also substantiates this claim of shifting childhoods by pointing out how childhood can be fragmented by geography, both urban and rural, as well as class life experiences²⁹.

²⁴ Ibid

²⁵ Ibid

²⁶ Rosen, pg. 297

²⁷ Honwana, pg. 41

²⁸ Archard, pg. 37

²⁹ James, Allison, and Alan Prout. *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*. London: Falmer Press, 1990.

The biggest category in which the conception of childhood can differ across cultures is according to Archard is boundaries. The boundary delineates where childhood comes to an end. Archard comments on how some societies may have coming of age ceremonies that mark the end of childhood and the beginning of adulthood. There may also be certain social factors such as marriage, leaving the parents' home, or providing for oneself that mark the beginning of adulthood as well³⁰. In cases like these, age does not play a dominant factor in determining who is a child and who is an adult. In many traditional, non-modern societies like the ones scattered throughout Africa, differentiating between a child and an adult is not nearly as dramatic as it is in western societies. In modern, western society, a 12-year-old for all intents and purposes is a child whose job is to play and learn. However, that same child, in a non-modern, traditional society could be considered an adult, especially since there are some cultures that perform adulthood ceremonies at the time of puberty. If this is the case, then for many boys, childhood ends at 10-12 years and for many girls, childhood ends at 8-10 years³¹.

Other societies do not believe that children should be exempted from contributing to their society and working just as hard as the adult in their community. In places such as Angola and Mozambique, a child is defined by the roles and responsibilities he or she takes on in society. Like Archard, Honwana comments on how age is not the main determining factor of a child. She says that unlike middle class children of western society, whose parents provide for them until they are able to take care of themselves, and in some cases even beyond that, other children around the world assume their place as laborers in society at a much younger age. They actively take part in the economy as well as household responsibilities. In fact among the Tchokwe, a group in Angola, the

³⁰ Archard, pg. 36

³¹ Ibid

children are recognized by the specific roles they assume and are even named based on the jobs they do for the community³². In places such as Mozambique, Angola Cameroon, Sudan and the Democratic republic of Congo, girls can be married off as early as when they are 13 - 15 years old. From that moment on they stop being seen as children and assume the duties associated with marriage and motherhood.

The differing notions of childhood and how the role of the child plays out in various cultures significantly affects how a country deals with those individuals and the issues surrounding them. Many countries that are currently facing civil war or that have faced civil war in the last decade saw the emergence of the child soldier. This individual is a child in limbo. He or she is not quite a soldier, yet has committed horrific atrocities and had their youth was stolen from them, leaving them and their communities unsure of their identities. International humanitarian law and humanitarian organizations have done their best to address and remedy the problems surrounding child soldiers through international documents such as the United Nations Convention on the Rights of the Child, the Rome Statue, and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. However problems in the strength of the language of these kinds of documents, an inability of both the international community and individual states to enforce the protocols, lack of complete knowledge about the situation in each target country, and attempts at universalizing a one sided view of childhood has allowed the child soldier phenomenon to persist in many war torn nations today.

³² Honwana, pg. 41-42

INTERNATIONAL COMMUNITY AND CHILDREN'S RIGHTS DOCUMENTS

History of International Community Involvement in Protecting the Rights of Children

Geneva Conventions of 1949

The involvement of children in warfare is not a new phenomenon. It has been a practice since the time of the crusades and it is deeply embedded in the history of different civilizations all over the world. However, the wars the world is facing now do not play by the same rules as they did during the time of the Geneva Conventions of 1949. The Geneva Conventions were broken up into four distinct parts. The First Convention applies to those members of the armed forces that had become ill or sustained an injury while out on the field³³. The Second Convention addresses those members of the armed forces who were at sea and had become ill, sustained an injury or become shipwrecked. The Third Convention deals with prisoners of war and the Fourth Convention talks about how civilians should be handled during war³⁴. When the Geneva conventions were developed there was a mutual understanding among all parties at war that human life was of value, therefore civilians were to be protected and respected by the members of any branch of the military. The Geneva conventions were also created under the assumption that wars were being fought between nation states³⁵. However, since the creation of the Geneva Conventions, modern warfare has changed drastically in nature and with respect to the actors involved. These changes have therefore rendered the Geneva Conventions insufficient in providing protection to non-combatants and civilians alike. The line between civilians and combatants has become blurred, especially in places like Africa, Asia, Latin America and the Middle East³⁶.

³³ Honwana, pg. 31

³⁴ Ibid

³⁵ Honwana, pg. 32

³⁶ Ibid

Universal Declaration of the Rights of the Child

The Declaration of the Rights of the Child was the first document to address children's rights in a targeted way on an international scale. This document was reimagined from its earlier version, one that was developed by the League of Nations in 1924³⁷. After the League of Nations was disbanded and the United Nations was created, the only document addressing the rights of humans was the Universal Declaration of Humans Rights.

The Universal Declaration of the Rights of the Child was adopted unanimously by the General Assembly of the United Nations on November 20, 1959³⁸. It was a non-binding document that focused on simply listing out what all a child is entitled to by virtue of being a child. It begins by defining what a child is, a definition that is now seen as very controversial because it ignores the cultural context in which children of societies other than the west may be raised. The definition is below³⁹:

"Whereas the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

The debate surrounding this document and its implication is addressing the issues focused on children, namely that of child soldiers is based on the part of the statement that says "physical and mental immaturity" and "needs special safeguards and care"⁴⁰. There is no mention of age or any specific factor determining when a child is physically and mentally mature and does not

³⁷ Abhinaya Ramesh. "UN Convention on Rights of the Child: Inherent Weaknesses." *Economic and Political Weekly* 36, no. 22 (2001): 1948-950. Pg. 1948

³⁸ "Declaration of the Rights of the Child." *Encyclopedia of Bioethics*. *Encyclopedia.com*. (April 2, 2017). <http://www.encyclopedia.com/science/encyclopedias-almanacs-transcripts-and-maps/declaration-rights-child>

³⁹ Ibid

⁴⁰ Ibid

require safeguards and care. The lack of specificity was noticed by the community, and therefore a child is defined more specifically in the next document.

The First Protocol Additional to the Geneva Conventions

The First Protocol additional to the Geneva conventions is one of several documents that were put in place to protect children from getting involved in armed conflict. It was added to the Geneva Conventions on June 8th, 1997. This protocol states that involved parties are required to take “all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces”⁴¹. This was the first time that any international document explicitly set an age limit as a factor in classifying a child.

United Nations Convention on the Rights of the Child

In the 1960’s there was an ideological shift in how human rights, and especially children’s rights, were perceived⁴². Children were seen to be more autonomous beings. That is one of the reasons why in 1979, nations began discussion about creating a more comprehensive document on children’s rights.

After almost ten years of debate and adjustments, the United Nations was finally able to adopt the historic UN Convention on the Rights of the Child in 1989 (CRC)⁴³. The convention was made up of fifty-four articles outlining the child’s right to life, survival, development, freedom

⁴¹ Honwana, pg. 35

⁴² Ramesh, pg. 1948

⁴³ Ibid

of thought, race, religion, and gender⁴⁴. The first article of the document states that for the purposes of the convention, a child is every human being that is under the age of eighteen years. It asserts in Article 3 that the best interests of the child must be the primary priority for all governing legislative bodies that choose to ratify this document⁴⁵. Since its creation, this document has become the “most ratified instrument of international law” with more than 190 countries ratifying it⁴⁶. Only the United States has chosen not to ratify the document⁴⁷. Aside from being the most ratified document in international law, there are a few other reasons why most of the discussion and debate about topics like that of Child Soldiers comes back to this very document.

First, even 25 years later, the CRC is still used by many of the world’s leading policy makers when dealing with the status of children⁴⁸. It has become the standard document against which most governments around the world will judge their progress in the field of children’s rights. Second, by ratifying the document, nations all over the world have agreed to be monitored through regular reports and be checked up on if there is indication that they have veered away from the articles listed in the convention⁴⁹. Some countries such as Norway and the Netherlands have taken

⁴⁴ Ibid

⁴⁵ Honwana, pg. 35

⁴⁶ Archard, pg. 107

⁴⁷ Although former president Bill Clinton signed the CRC, the document needed 2/3 majority vote in the senate to pass. However, concerns about U.S. sovereignty raised by many republican senators hindered the ratification of this document. There was especially concern over the threat to parental rights such a document would have. At the moment state governments have exclusive jurisdiction over policies regarding families and children. If the CRC is ratified, organizations such as the president of Parentalrights.org worry that the nation would be ratifying a treaty that would give a child too much power, to the point that a government review could be triggered over any decision made by a parent that a child disagreed with. There was also worry that the supremacy clause would allow the governments to make decisions about children and separate them from their parents without absolute proof of harm as is currently required. Attiah, Karen. "Why won't the U.S. ratify the U.N.'s child rights treaty?" *The Washington Post*, November 21, 2014. Accessed May 3, 2017.

⁴⁸ Archard, pg. 107

⁴⁹ Ibid

the issues surrounding children's rights so seriously that they have incorporated the CRC into their own domestic law, thereby binding the state and its citizens even tighter to the constraints of the CRC⁵⁰. Third despite some major flaws, the CRC has done a relatively good job of reducing child morality, expanding educational opportunities for children, tackling child trafficking, and to a limited capacity addressing the issue of child soldiers⁵¹. Fourth, the CRC gives rights to all children around the world and in every society. It recognizes and acknowledges that no matter the race, gender, nationality, or ethnicity of the child, all children have the same set of basic needs and are entitled to some form of protection for those needs⁵². Fifth the CRC has set the precedent for other international children's rights documents such as: the Optional Protocol on the Rights of Children involved in Armed Conflict in 2002, the Optional Protocol on the sale of Children, Child Prostitution, and Child Pornography in 2002, and the Standard Minimum Rules for the Administration of Juvenile Justice otherwise known as the Beijing Rules⁵³.

While the CRC has done a great deal to advocate for reform and change in the arena of children's rights, it is still rather limited in its success. There are both legal and practical problems with the document. After all there are still children who face abuse on a daily basis, who are sold and forced to work under inhumane conditions, and who are often separated from their families and faced with global mistreatment. There are some major flaws with the CRC where its implementation and its impact are concerned.

The first major flaw of the CRC come in the form of implementation. The way the implementation system works is that the governments of the states that have ratified the treats

⁵⁰ Ibid

⁵¹ Ibid

⁵² Archard, pg. 108

⁵³ Ibid

submit reports on their progress in children's rights to a group called the Committee on the Rights of the Child⁵⁴. The committee is then supposed to review the reports and recommend strategies to improve progress and provide assistance along the way⁵⁵. Although such a system sounds fantastic in theory, in reality the implementation process is a bit of a disaster. Many of the states that have ratified the treaty are behind in their submission of the reports, often having failed to even file their first report, and by 1998 only 113 countries had filed that first report. In fact, it is a well-known fact in the international community that states pay no more than simple lip service to the committee and the convention⁵⁶. Not to mention that abuse of children is still rampant in many of the countries that have ratified the Convention. Secondly, the method of self-reporting was created so that the states would be able to implement the articles of the CRC with more ease. However, after the failure of reports on behalf of many of the states, the self-reporting mechanism is instead seen as a weak because "states reporting to the committee often seek to supply inadequate and uncritical information regarding the condition of children's rights" in their respective countries⁵⁷. Third in the first 7 years of the committee's existence, no women were on the panel. Fourth, the Convention encompasses a wide range of rights, which can cause problems for the committee and elongate the time it takes to implement change because different kinds of rights require different kinds of implementations.⁵⁸ Each of these issues makes it difficult for the CRC to effectively shape change in Children's rights all over the world.

Another limitation of the CRC is the fact that the United States is the only country that has failed to ratify the CRC. By not ratifying the CRC, the United States, as a world power, undermines

⁵⁴ Ramesh, pg. 1948

⁵⁵ Ibid

⁵⁶ Archard, pg. 109

⁵⁷ Ibid

⁵⁸ Ramesh, pg. 1949

the value of the document in its attempt to be applicable to children all over the world⁵⁹. Additionally, the document only addresses states as being responsible for the welfare of the children within their borders. One of the biggest problems in children's rights is that of the child soldier and majority of the actors involved in child soldier recruitment are non-state actors. By not including them in the document, their presence severely limits the effectiveness of the document. The CRC also features articles that appear to be slightly contradictory especially when considering the problem of child soldier. Article 38 refers to children in the military and states in three provisions:

- 1) *State Parties undertake to respect and to ensure respect for the rules of international humanitarian law applicable to them in armed conflicts that are relevant to the child.*
- 2) *State Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a part in hostilities.*
- 3) *State Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, states parties shall endeavor to give priority to those who are oldest.*⁶⁰

It seems as though here the age of recruitment for a child can be as low as 15 but in other parts of the same document a child is defined as anyone under the age of 18. It begs the question then that if everyone under the age of 18 is a child and all children should be protected, why is it that a child under the age of 18 but older than 15 can be a part of the military albeit voluntarily. Article 41 attempts to resolve the conflict in Article 38 by stating that "any conflict between the provisions of the Convention and obligations under municipal or international law must be settled in favor of whichever rule provides the greatest protection"⁶¹

⁵⁹ Marriott, Michael K. "Utilizing the Past to Shape the Future: The Rehabilitation of Child Soldiers in Darfur." *N/A* (2011). pg. 14;

⁶⁰ Marriot, pg. 13

⁶¹ Ibid

The CRC is also prone to weak language. In terms of weak language, the convention makes the protection of civilians, including children, a matter of feasibility for the states instead of one of necessity⁶². If the language was stronger like it is in Article 1 of the African Charter on the Rights and Welfare of the Child, then the CRC may have a better chance at pushing the states to adhere to the agreed conditions:

“Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter”⁶³

African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the child was developed by the Organization of African Unity in 1990. It came into full force on November 29, 1999. As of now, 41 countries have both signed and ratified the document, 9 countries have signed the document but have not ratified it, and 4 countries have yet to sign and ratify the document⁶⁴. There are a few articles in this document that are incredibly important when addressing the issue of child soldiers. Those articles include 2, 17, and 22. Just as the CRC defines a child, the African Charter’s Article 2 also defines a child as “every human being below the age of 18 years”⁶⁵.

⁶² Ramesh, pg. 1949

⁶³ African Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986 [hereinafter African Charter on Human and People’s Rights]

⁶⁴ "Ratification Table: African Charter on the Rights and Welfare of the Child." African Commission on Human and People's Rights. Accessed April 02, 2017. <http://www.achpr.org/instruments/child/ratification/>.

⁶⁵ African Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986 [hereinafter African Charter on Human and People’s Rights]

Article 17 addresses how children should be treated and what special treatment they will receive in the case of juvenile justice. Article 17 states:

Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others⁶⁶.

Finally, there is Article 22 which deals with the protection of children and the responsibility of nation states in protecting them during bouts of armed conflict. This article states the responsibilities of protection in three parts:

- 1) States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts that affect the child.*
- 2) States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.*
- 3) States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife⁶⁷.*

Rome Statue of the International Criminal Court 1998

The decision to create an International Criminal court was finalized on July 17, 1998 after almost three years of constant discussion and debate and five long weeks of negotiations⁶⁸. Prior to this decision, there had been little no prosecutions of international crimes. After all there was no incentive for states to prosecute their own nationals for crimes perpetrated against another

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ "Summary of the Key Provisions of the ICC Statute." Human Rights Watch. December 1, 1998. Accessed April 02, 2017. <https://www.hrw.org/news/1998/12/01/summary-key-provisions-icc-statute>.

country⁶⁹. Especially in cases where the countries were run by repressive dictatorships in which the leaders would commit heinous crimes against their own people. The tide however has turned. The vast majority of the international community agreed to create a space that would bring some of the worst criminals in the world to justice. The tally was 120 states in favor, 21 abstentions, and 7 against⁷⁰. After the vote 60 countries ratified the treaty, making the theory of an international criminal court, a reality. Although this court is not perfect, the provisions provided in the statute allow it to set a strong precedent for any future proceedings. The Statute has its positives and negatives.

Some of the successes of the ICC include the fact that the statute passed despite concerns from various countries about semantics in the document, and the fact that ratification only took 4 years and that almost 57 nations have joined since the original 60 needed for ratification⁷¹. Additionally, the Statute limited the power of the court so it could not become an unrestricted power. The one major success of the Rome Statute is with respect to the protection of children⁷². In terms of the recruitment of children, there is a standard of negligence incorporated into the prosecution of those individuals involved with recruitment of children in military operations or warfare. These individuals can be found guilty of charge if they knew or rather should have known that the children they were recruiting was under the age of 15⁷³. Additionally, the Rome statute is

⁶⁹ Marler, Melissa K. "The International Criminal Court: Assessing the Jurisdictional Loopholes in the Rome Statute." *Duke Law Journal* 49, no. 3 (1999): 825-853. Pg. 826

⁷⁰ "Summary of the Key Provisions of the ICC Statute." Human Rights Watch. December 1, 1998. Accessed April 02, 2017. <https://www.hrw.org/news/1998/12/01/summary-key-provisions-icc-statute>.

⁷¹ Donovan, Daniel. "International Criminal Court: Successes and Failures." *International Policy Digest*, March 23, 2012. Accessed April 2, 2017.

⁷² McBride, Julie. *The War Crime of Child Soldier Recruitment*. The Hague: T.C.M Asser Press, 2014. Pg. 79

⁷³ Ibid

being implemented in domestic courts with respect to the prosecution of children. Over all the major successes of the Rome Statue and the court have come about in the form of “legal precedence, general international acceptance, and the adaptability of the court”⁷⁴.

At the same time, however, there are flaws to the Rome Statue. For example, the United States of America has chosen not to ratify the agreement over factors such as worries about prosecution of the US armed forces⁷⁵. Additionally, many of the cases brought to the court were unsuccessful, a lot of money on the courts has been wasted, and only one case, the case of Thomas Lubanga Dyilo, was successful but took three years to complete⁷⁶.

International Labor Organization Convention on the Worst Forms of Child Labor 1999

After the Rome Statue came the International Labor Organization Convention on the Worst Forms of Child Labor. This Convention was adopted on June 17th, 1999 and was officially went into effect on November 19th, 2000⁷⁷. By mid-2003, 129 countries had ratified the treaty and by 2017 that number has increased to 180. The important part of this treaty is that first the International Labor Organization took precedent from previous international documents and chose to define the child under Article 2 as any individual under the age of eighteen and second the organization defined the term “worst form of child labor”⁷⁸ as:

*...all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict*⁷⁹.

⁷⁴ Donovan

⁷⁵ Marler, pg. 831

⁷⁶ Donovan

⁷⁷ Marriott, pg. 12

⁷⁸ Ibid

⁷⁹ Ibid

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

One of the most debated issues in the field of children's rights at the international stage was the age of recruitment. Most humanitarian organizations and non-governmental organizations vehemently fought against 15 being the lower limit of recruitment into the military because they thought that it was too young for children to enlist⁸⁰. However, countries like the United States, the United Kingdom, and Australia wanted the limit to be set low so that students interested in going to military schools could start their training earlier. However, by pushing the limit lower, they chose to ignore the implication of such a limit on the children outside of their respective borders. In order to resolve this conflict, the UN created a working group tasked with examining the costs and benefits to the low age limit. The debate over whether to increase the lower age limit to 18 lasted for more than 6 years. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts was then proposed at the sixth session of the working group⁸¹. In the Optional Protocol, 18 was written up to be the minimum age for military recruitment and ultimately the protocol was adopted by the the UN General Assembly in May 2000. The protocol is stronger than some of the other international documents because it applies to both state militias and non-state actors. It also asserts that the rehabilitation of former child soldiers is the responsibility of the state⁸². The down side of the protocol is that while it does address non-state actors in its articles, it is the responsibility of the states to ensure that the document is implemented. Often in situations where the states are responsible for ensuring that children are not forcibly recruited into the military, the nations are unable to do anything for the

⁸⁰ Honwana, pg. 36

⁸¹ Ibid

⁸² Ibid

children because the non-state actors in their region refuse to comply with the regulations during armed conflict. That is why even now, children are being forced into guerilla groups as young as 6 and 7 years old.

ACCOUNTABILITY

With the issue of child soldiers comes the question of accountability, usually in the form of prosecution. However, the idea of prosecuting child soldiers is delicate because they are often viewed as both victims and perpetrators. On the one hand there are accounts of them being kidnapped and forced to participate in the activities of insurgency groups, on the other hand there are many children who voluntarily join insurgencies for the purposes of revenge or ideology. There is a continuing legal discussion on the issue of the criminal liability of child soldiers based on the concept of *actus rea*, which means to commit a wrongdoing and *mens rea*, which means to commit to a wrongdoing with intention. International Criminal Law has yet to determine whether child soldiers can actually intend to commit international crimes. At the moment no child soldier has ever been prosecuted by the international criminal court and it is very likely that children may never be prosecuted for their crimes at the international level. In order for children to be prosecuted the international community must consider the most effective punishment method for the perpetrators, the procedure for the trials, ensuring the safety and confidentiality of those involved, and the effect it would have on their ability to be reintegrated back into their societies.

Individuals and groups arguing that child soldiers should not be prosecuted claim that the children are too young to understand their actions, that it is their kidnappers who should be punished, that children are not psychologically mature enough to make their own decisions, that no standardized age has been determined for international criminal culpability of minors, and that it is difficult to prove both *mens rea* and *actus rea*.

According to the Universal Declaration of the Rights of the Child, a child is physically and mentally immature and because of this immaturity needs special safeguards and care. According to the Convention on the Rights of the Child, any human being under the age of 18 is a child. Since

the CRC has been ratified by every nation except for the United States, humanitarian organizations and NGOs can comfortably assert to any country in the world that has ratified the CRC that no child can be prosecuted because physical and mental immaturity can be understood as not having the ability to fully understand the consequences of their actions. If an individual is unaware of the impact his or her actions will have on the affected party, but through rehabilitation efforts and re-education efforts can be made to understand these consequences, prosecution could not possibly be the best solution. Many of the children involved in armed conflict around the world are well under the age of 18 and have often been kidnapped or forced to participate the activities of the insurgencies that kidnapped them. Attempts to escape have been met with more death and destruction than any child should ever have to witness in his or her life time. In her book, Honwana cites firsthand accounts of a few anonymous ex child soldiers. One of them said:

“Whoever did not want to fight was killed...They would slice the throat of those who did not want to fight...I was trained for three days on how to march and run. Then they gave me my weapon and I got used to fighting The orders were to kill anyone we caught and to bring back anything they had on them.”⁸³

Another boy soldier recounted his experience of witnessing the execution of his brother who had tried to escape. He said:

“My brother and I were together in the same camp. My brother was caught while trying to escape and was tied to tree and killed. I was watching but I had to keep myself from crying, because of they discovered that we were related I could have been killed too.”⁸⁴

Reading about accounts such as the ones above are what drive these organizations to push for the prosecution of the kidnappers of child soldiers instead. That is one of the reasons why the

⁸³ Honwana, pg. 60

⁸⁴ Ibid

Rome Statue was passed, to deal with this issue of prosecution. Although there are issues with the effectiveness of the International Criminal Court, where the Rome statue is to be implemented, one of the most successful cases to come out of the criminal courts was the case of Thomas Lubanga⁸⁵. Most humanitarian organizations push for more prosecution efforts towards individuals like Lubanga who have been guilty for the pain and suffering to the child soldiers and indirectly to the victims of the child soldiers acting on the orders of the commanders.

In addition to faulting the commanders of these guerilla organizations, many humanitarian organizations and individuals like Fanny Leveau, a LL.M. graduate of the Faculty of Law at The University of Western Ontario cite psychological reasons for the not prosecuting child soldiers. According to her research, Studies show that the psychological development of children varies among children making it difficult to decide when children can be accountable for their actions under international criminal law. Leveau cites Professor Naomi Chen's research on the impact of neuroscience on understanding the actions of child soldiers in support of this argument. Professor Chen found that early abuse and neglect in a child can change the structure of that child's brain and in the case of threatening situations, behavior unacceptable in society may result as a form of self-preservation, i.e. committing a crime⁸⁶. The findings of Professor Chan and the variation in psychological development of children make it incredibly difficult to determine when the necessary element of mens rea is required.⁸⁷ If the age at which consequences can be understood

⁸⁵ Thomas Lubanga was the Democratic Republic of Congo's warlord. In March 2012, he was found guilty of abducting and using children under the age of 15 as child soldiers. Boys and girls as young as 11 years old were used in combat and as sex slaves. Lubanga was the first man to ever be convicted by the International Criminal Court and he was sentenced to 30 years in prison, however the sentence was reduced by over 10 years if Lubanga committed to offering a genuine apology for the victims of his actions.

⁸⁶ Leveau, pg 38

⁸⁷ Leveau, pg 37

is difficult to determine, and mens rea is difficult to determine, then it becomes very difficult to develop an effective minimum age requirement for criminal liability under international law. That is not to say that there is not precedent because there are domestic courts that do have minimum age requirements, but that adds another complication. Different countries have different ideas about what that age limit should be. The lowest domestic minimum age⁸⁸ for criminal liability is 6 (Mexico) and the oldest is 16 (Argentina). With such a large gap in age between different countries, there are bound to be a few major disagreements about how to proceed. The Committee that helped develop the Conventions on the Rights of the Child (CRC) recommends that the age limit should not be set too low. However this statement does not help the International Criminal Courts in determining a universal minimum age for criminal liability under international law.⁸⁹

In addition to the psychological and age aspect of child soldiers, attempting to prosecute child soldiers would also lead to a variety of serious practical issues according to Leveau. She describes how international criminal tribunals are unable to ensure a thorough application of rights that are supposed to be granted to juvenile offenders, for example the right to privacy at every stage of the proceedings due to lack of adequate resources.⁹⁰ Another practical issue with the prosecution of child soldiers stems from the dual role they play as victims and perpetrators. The Rome Statute in the International Criminal Court states:

*...where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*⁹¹

⁸⁸ Minimum age for criminal liability is the age at which an individual can be legally prosecuted for crimes

⁸⁹ Leveau, pg 39

⁹⁰ Leveau, pg. 62

⁹¹ Leveau, pg. 63-64

The difficulty with this statute lies in the cases where the child being prosecuted could just as easily be considered the victim. The strong wording of the Rome Statute implies that no matter what, if the personal interests of the victims are affected, they will be allowed to share their viewpoint and that viewpoint will be considered at every stage of the proceeding. At the moment, child soldiers are not able to be prosecuted by the ICC however if they were, then nearly every child soldier could simply request status as a victim creating a challenging situation for the international community.⁹²

Lastly, in order to be found criminally liable by the ICC, an individual requires that both *actus rea*, which is committing the criminal act in question, and *mens rea*, which as mentioned before is having the intention to commit a crime, are present and all reasons for excluding liability have been examined.⁹³ Where child soldiers are concerned, in most cases *actus rea* can be located quickly as long as there are witnesses. It is the *mens rea* element that is a harder obstacle to overcome. When looking to the domestic courts to see how they deal with this issue, many have in place minimum age requirements for criminal prosecution. These restrictions are indicative of the idea that up until a certain point, children have neither the capacity to understand their actions nor the consequences of those actions.⁹⁴

While the humanitarian organizations lay out compelling arguments, individuals and groups who believe the best method of accountability with respect to child soldiers is prosecution lay out their arguments by in four points. First, the prosecution of child soldiers aligns closely with the goals of international criminal law (ICL). International criminal law is legal system where the

⁹² Leveau 64

⁹³ Leveau 64

⁹⁴ Leveau pg. 63

international community holds fair and independent trials⁹⁵. The objectives of international criminal law are determined based on the interpretations of different international courts and tribunals. For example, the International Criminal Tribunal Court of Yugoslavia (ICTY) stated two objectives of international criminal law. The first aim of ICL according to ICTY was the theory of retribution and the second aim of ICL was deterrence. Both the theory of retribution and deterrence are theories of punishment. The theory of retribution was developed by Immanuel Kant. He believed that punishing the criminals of a society would bring future prosperity to that society. However, the ICTY clarified that although the objective was developed from Kant's theory of punishment, the purpose of international criminal law was directed more towards expressing outrage at the crimes of the perpetrator⁹⁶. If one of the primary aims of international criminal law is to prosecute criminals in order to allow for the expression of outrage from the victims, children who have voluntarily joined the rebel militias and committed heinous crimes should be prosecuted. Their cases should be reviewed without the interference of humanitarian organizations bringing up children's rights and putting forth this idea that children are immature, pre social, naïve, inferior beings who have little understanding of the consequences of their actions before the age of 18. Interfering in the cases can lead to greater pain and suffering for the family of the victims of the child soldiers.

Similar to Kant's theory of retribution, Jeremy Bentham's deterrence theory of punishment implies that punishing criminals will also be beneficial to society in the future. In Bentham's view, punishment will deter other criminals from committing crimes thereby making the society safer overall for ordinary citizens. However, there are many jurists who criticize this theory for two

⁹⁵ Jawad, Saqib. "Objectives of International Criminal Law and Jurisdiction of ICC." *Sociology and Anthropology* 3, no. 3 (2015): 163-170.

⁹⁶ Jawad, Pg. 164

reasons: they believe that the lack of established limits can lead to unnecessary punishment and using deterrence can lead to the prosecution and punishment of innocents⁹⁷.

Since the 18th century however, the objectives of international criminal law have changed. There is now a greater emphasis on reformation of the criminals, as well as on education, and justice for the victim party⁹⁸. Children who are young and still impressionable still have the ability to change. By prosecuting children who are guilty of crimes against humanity and then working with them during their sentence to improve their judgement and educate them about right and wrong will be more beneficial to society, than writing them off as immature and naïve beings. In fact, there are many humanitarian organizations that subscribe to this practice of reformation and believe that it should be implemented accordingly⁹⁹.

With respect to justice for the victim party, that is the primary goal of every criminal court, be it international or domestic. Without the victims and their families feeling as though they have been heard and believing that their perpetrators have been brought to justice, reintegration efforts, especially for child soldiers who may not have any family left, become very difficult to implement successfully.

Second, while international criminal law is new and has yet to address the problems surrounding topics like child soldiers, in international humanitarian law, a relatable and much more established field, there is evidence in the Convention on the Rights of a Child (CRC) to suggest that child prosecution could be possible¹⁰⁰. This treaty is widely acknowledged and respected in the international community and while it does not claim to support the prosecution of children it

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Leveau, Pg. 51

also does not actively advise against it¹⁰¹. It simply states that in the event that a child is prosecuted, certain conditions must be fulfilled. The fact that this document has been ratified by almost every country in the world proves that the international community believes that children could be liable to prosecution. Leveau also implies that if the international community believes that children could be liable to prosecution, then they could also have the intention or, *mens rea*, necessary to commit a crime. As mentioned before, in order to prosecute an individual in the International criminal courts, there must be proof of *actus reus* and *mens rea*. While *actus reus* is relatively easy to prove, *mens rea* is much more difficult and has often been deemed impossible to prove. However, with Leveau's line of reasoning, careful analysis of individual child soldier cases may allow for possible future prosecutions¹⁰².

Third, there are children who voluntarily chose to fight in the rebel militias. If these individuals are allowed to walk away unpunished, it would be a disservice to all the victims that suffered under their blade. After all, not every child soldier is a result of kidnapping and intimidation. According to Rosen, one of the most significant problems with international law concerns the abstract theorization of child soldiers as primarily being seen to be victims or products of adult criminal actions¹⁰³. If this position is assumed, as it appears to be by most humanitarian and non-governmental organizations, children cannot be held accountable for any and all war crimes they commit. In an attempt to contradict the humanitarian narrative, Rosen brings forward the examples of street children in Liberia¹⁰⁴. These children were among the first individuals to enlist in armed groups, and they were often instigators of violence where the Palestinian intifada

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Rosen, pg. 297

¹⁰⁴ Ibid, pg. 298

was concerned¹⁰⁵. Children in the Lord's Resistance Army (LRA), one of the most notorious rebel groups in Uganda also has a fair number of children, who willingly choose to join the ranks. The 2006 Survey of War Affected Youth, otherwise known as SWAY, provides proof that children willingly chose to integrate themselves into the rebel army¹⁰⁶. Although the survey shows one-third of the male LRA soldiers as having been kidnapped and forced to participate as combatants and one-sixth of female LRA soldiers as having the same situation as their male counterparts, the vast majority of the children were released after only a short period of time with the group. There were children who stayed with the LRA for more than 3 months, and those who did, when surveyed, showed signs of craving leadership status within the groups and an unwavering allegiance to Joseph Kony¹⁰⁷.

There are three primary reasons why children take up arms. The first is for survival, the second is for liberation from the constraints of society, and the third is for ideology and cultural values. In Sierra Leon for example, many of the children grew up in a war zone¹⁰⁸. They were suffering from lack of basic necessities like food and water. The guerrilla groups in their area often gave them food and a sense of security in return for their enlistment. Although in some cases the guerrilla groups act as a surrogate family for these children, that is not to say that guerrilla groups do not take advantage of the plight of the children and exploit their weakness, but not all guerrilla groups use this tactic. There are some scholars however that believe any choice children have in deciding to join these rebel groups is not really a choice because children do not have the capacity to act in their own best interests¹⁰⁹. This line of reasoning is flawed.

¹⁰⁵ Ibid

¹⁰⁶ Ibid, Pg. 299

¹⁰⁷ Ibid

¹⁰⁸ Marriott, pg. 16

¹⁰⁹ Ibid

If choosing the guerrilla groups gives children their best chance at surviving in the war zone they grew up in, then they are acting in their best interests. Their instinct says to go where they will be provided with the basic necessities for survival. If they were not born in such a harsh environment and were instead brought up in a middle class household in the United States, it is understood that there would be very little chance they would choose to join a rebel group. However, to say that a child cannot act in their own best interests is a falsehood. Those who have chosen to join and committed crimes against humanity should be dealt with reasonably, keeping in mind of course the age at and circumstances under which they joined. Honwana furthers the sentiment by bringing in Giddens's theory. This theory assumes that "human action is framed by social structures that shape relations of power,"¹¹⁰. Honwana asserts that child soldiers are agents in their own right because they are able to in certain situations, "mobilize resources to alter the activities of others and, thereby, of themselves"¹¹¹. She admits that while child soldiers cannot be fully implicated for their actions, one cannot deprive them of all agency either¹¹².

The second reason why children join these guerrilla armies is for liberation. The civil war in Sri Lanka is a good example. For decades the Tamils, a minority group, had been made to feel like second class citizens to the Sinhalese. The Tamil United Liberation Front originally attempted various bureaucratic and parliamentary methods to push for reforms that would provide justice and equality for their people. However, after witnessing little to no improvement, the Tamils concluded that the only way to get the attention of their oppressors was through militant methods; therefore a few Tamils founded the Liberation tigers of Tamil Eelam (LTTE) or Tamil Tigers. This movement was formally established in 1976 and "originated out of several wings of the respective Tamil parties in the North and Northeast of

¹¹⁰ Honwana, pg. 70

¹¹¹ Ibid

¹¹² Ibid, pg. 69

Sri Lanka”¹¹³. Since their creation the LTTE has pushed for independence and has been entangled in a bloody conflict with the Sri Lankan Armed Forces¹¹⁴. The 25-year-long civil war finally ended on May 18th, 2009. During the war, the Tamil Tigers used child soldiers extensively. However, many of the Tamil youth had been consistently harassed by the Sinhalese government from a young age. The unending cycle of “shelling, helicopter strafing, roundups...deaths, injury, destruction, mass arrests, detention, shootings, grenade explosions, and land violence” had only served to empower the children to fight for their rights against the oppression perpetrated by the Sinhalese government¹¹⁵. In fact, almost three decades of children between the ages of nine to sixteen had consistently chosen to be a part of the LTTE. They were known as the baby brigade of the Tamil Tigers¹¹⁶.

The Tamil Tigers’ Baby Brigade however is not alone in their desire for liberation from the oppression of the majority in their society. Just as the Sri Lankan Tamil youth had felt oppressed by the Sinhalese majority, the women in Mozambique who took part in Frente de Libertação de Moçambique’s (FRELIMO)¹¹⁷ Destacamento Feminino (“Female Detachment”) felt repressed by the male dominated culture prevalent in their society¹¹⁸. The FRELIMO was a guerrilla army fighting for Mozambican independence from Portuguese rule in the 1960s and 70s.

¹¹³ Hellmann-Rajanayagam, Dagmar. "FEMALE WARRIORS, MARTYRS AND SUICIDE ATTACKERS: Women in The LTTE." *International Review of Modern Sociology* 34, no. 1 (2008): 1-25. Pg. 3

¹¹⁴ Hellmann-Rajanayagam, pg. 4

¹¹⁵ Gray, David H., and Tom Owen Matchin. "Children: The new face of terrorism." *International NGO journal* 3 (May 20, 2008): 108-14. Accessed March 28, 2017. <http://www.academicjournals.org/INGOJ>. Pg. 110

¹¹⁶ Gray and Matchin, pg. 110

¹¹⁷ The FRELIMO was a guerilla army fighting for Mozambican independence from Portuguese rule in the 1960s and 70s.

¹¹⁸ West, Harry G. "Girls with Guns: Narrating the Experience of War of FRELIMO's "Female Detachment"." *Anthropological Quarterly* 73, no. 4 (2000): 180-94. October 22, 2012. Accessed March 29, 2017. doi:10.1353/anq.2000.0015.

The Female Detachment was composed of young girls and women who had been sent to the back of the main movement for the purpose of being taught the same guerrilla tactics as their male counterparts. Both Rosen and Harry G. West argue that the Female Detachment movement was an opportunity for women to break away from the patriarchy. In fact, West asserts that girls and young women felt more empowered than victimized by the cause¹¹⁹. By participating in this movement, many of the ex-child combatants, now as adult women, stated that the movement provided them with a space to overturn the traditional culture norms and gender based hierarchies rampant in their homes. They were finally able to take on their full status as citizens of the society and engage in Mozambican politics¹²⁰.

Keeping up with the female narrative, there were also young school girls who joined the Eritrean People's liberation Front. Here they were allowed, even encouraged to carry arms and given roughly the same combat status as the men in the group¹²¹. When the girls reflected on their experiences in the rebel army they said that they gained "critical perspectives" about Eritrean society¹²². It was first time they learned what collective action could accomplish and what gender equality felt like. Similar sentiments were shared by the female ex-combatants of the Tigray People's Liberation in Ethiopia. These women claimed that having been in the guerrilla group, they were much more "self-confident, independent, and politically aware" than the girls who had chosen not to participate¹²³. Majority of these women had been between the ages of 5 to 17, well under the minimum of the legal age of being allowed to serve according to the international law.

¹¹⁹ West, pg. 180

¹²⁰ Rosen, pg. 299

¹²¹ Ibid

¹²² Bernal, Victoria. "Equality to Die For?: Women Guerrilla Fighters and Eritrea's Cultural Revolution." *PoLAR: Political and Legal Anthropology Review* 23, no. 2 (November 2000): 61-76. doi:10.1525/pol.2000.23.2.61. pg. 72

¹²³ Rosen, pg. 299

However, none of the women reported feeling victimized or powerless during or after their time serving¹²⁴.

There are also many children who go into the military because of cultural values. Some families in Sierra Leone are known to encourage their children to join the civilian militias because it provides an elevated social status to the members and by connection, the family. There were also hundreds of children who voluntarily enlisted in the People's Liberation Army (PLA) in Nepal prior to the ceasefire. Although Nepali Human Rights NGOs claim that the Maoists enticed the students through money, the equivalent of \$100 to \$141 US dollars a month, first hand testimony from the children says otherwise¹²⁵. Take, Bikram, a 16-year-old boy from the Jumala district, as an example. He talks about his motivation for joining the Maoists below:

*"was in class 6 [age 13] when they started [to] come to my class. I was 15 when I decided to join. I was highly influenced by the political ideology. I didn't tell my parents. I ran away from home. They wouldn't allow it. They said I have to study and work. All but five students from my class joined. All were influenced by the Maoists ideology and the cultural activities. No one was forced to join."*¹²⁶

From the baby brigade in the Tamil tigers to the children in the People's Liberation Army in Nepal, every group is littered with youth who voluntarily chose to participate in the rebel movements. Although there are plenty of instances where children are indeed forcibly recruited and pressured to join, it is unfair to the victims of these children to assume that any and all individuals under the age of 18 are incapable of having agency and the capacity to make rational decisions. The examples of voluntary enlistment show that children should not be viewed as

¹²⁴ Ibid

¹²⁵ Zia-Zarifi, Saman. "Children in the Ranks: The Maoists' use of Child Soldiers in Nepal." *Human Rights Watch* 19, no. 2 (February 1, 2007): 1-72. February 1, 2007. Accessed March 28, 2017. Pg. 23

¹²⁶ Zia-Zarifi, Pg. 26

emotional decision makers who are pushed into enlistment only because they *believe* that is the only way to ensure daily meals, because they *feel* that they need to enlist for their own protection, or because they are *enticed* by the lure of ideology¹²⁷. The constant use of terminology that is reminiscent of emotions undermines the agency of the children. It makes them look as though they are unable make an informed and independent decision after careful evaluation of a difficult situation. Although there are many in the international community who view children with this lens of helplessness, there are also plenty of domestic jurisdictions who, under the Rome Statute of the ICC, have implemented a juvenile justice system to deal with the prosecution of children¹²⁸. While the international community continues to debate over whether or not the age of majority should be 15 or 18, most domestic courts already have a system in place for juveniles that allows child prosecution. The fact that child prosecutions have already occurred in a few of these courts should indicate to the international community that not all children should be considered to be as helpless, innocent, and in need of protection as most western societies appear to claim. In Africa, child soldiers are usually charged with war crimes. Cases in which prosecutions have occurred include the Democratic Republic of Congo (DRC), Uganda, and Rwanda. On January 15th in 2000, a 14 year old male child soldier known by the name of Kasongo was prosecuted and executed with 4 other soldiers for the murder of a driver¹²⁹. Later in 2001, the DRC again sentenced 4 children ranging between the ages of 14 to 16 to death, however immense pressure from NGOs led the courts to recant their earlier decision¹³⁰. Then in Uganda two former child soldiers were sentenced

¹²⁷ Machel, Graça. *Impact of Armed Conflict on Children*. New York: United Nations, 1996. April 1, 2017. <http://www.un.org/documents/ga/docs/51/plenary/a51-306.htm>. Pg. 12

¹²⁸ Leveau, pg. 53

¹²⁹ Good, Meaghan. "2000: Kasongo, child soldier." ExecutedToday.com. November 24, 2010. Accessed April 01, 2017. <http://www.executedtoday.com/2011/01/15/2000-kasongo-child-soldier/>.

¹³⁰ Leveau, pg. 55

on a treason charge that was later withdrawn due to lobbying by Human Rights Watch, and in Rwanda where almost 4000 child soldiers were charged with committing genocide¹³¹. If countries who have ratified the Rome Statue under the International Criminal Courts have an obligation to prosecute *any* individual who is accused of committing an international crime, then they are also under the obligation to prosecute any child soldier when the occasion arises¹³². So then if the domestic courts are obligated to prosecute child soldiers, there is no reason for international criminal justice to abide by a different standard¹³³.

Unfortunately, the International community is still in disagreement over how to deal with the problem of child soldiers. At the moment they have adopted a westernized interpretation of childhood which is heavily reflected in numerous international documents. Many of these documents such as the UNSCRC choose to ignore the details and context in which the child soldier problem arises and instead focus specifically on finding a universal legal solution to the problem. By delineating the age of 18 as the moment a child becomes an adult, the document has had very little success where child soldiers are concerned¹³⁴. There is no universal experience or universal understanding of childhood and that is one of the biggest reasons why the document fails to address the root of the child soldier problem. Therefore instead of taking one version of childhood and trying to disseminate it throughout the world in a kind of new western tool of imperialism, a more productive solution would be to try to create “structures that provide the child with alternatives to violence”¹³⁵. A second solution would be to recognize that a child can have agency and the ability

¹³¹ Ibid

¹³² Ibid, pg. 58

¹³³ Ibid, pg. 59

¹³⁴ Whitworth, Kathryn D. "Western Depictions of Children and the New Imperialism." PhD diss., University of St Andrews, 2009. April 9, 2010. Accessed April 1, 2017.

¹³⁵ Ibid

to make decisions that are in their best interest. The fact that in Canada, the minimum age for criminal liability is 12, in England and Wales it is 10¹³⁶, in Scotland it is 12¹³⁷, and in most states in the United States it is 7 shows that plenty of western societies are willing to prosecute children well under the age of 18. If a child can be prosecuted domestically that young, it is inconsistent then for many of these same countries to insist that children under the age of 15 should not be prosecuted in international criminal courts by reasoning that they are too young to understand what is in their best interests.

¹³⁶ "Age of criminal responsibility." Age of criminal responsibility - GOV.UK. Accessed April 01, 2017. <https://www.gov.uk/age-of-criminal-responsibility>.

¹³⁷ Brooks, Libby. "Scotland to raise age of criminal responsibility to 12 years." *The Guardian*, December 1, 2016. Accessed April 1, 2017.

REINTEGRATION

How to reintegrate Child Soldiers back into society?

Alongside the question of accountability about child soldiers is also the question of determining the best ways to reintegrate them back into their society. International documents aimed at resolving the child soldier phenomenon fail to adequately address the concerns raised with respect to reintegration. They assign responsibility of reintegration to the states. Unfortunately many war torn states suffering from rampant use of child soldiers are unable to properly develop and fund facilities and programs aimed at rehabilitating and reintegrating child soldiers back into their communities. Luckily organizations such as UNICEF have to together to assist in these efforts. However the stark difference in how the west defines a child (any individual under the age of 18) and how places like Africa define a child (individuals above the age of 14 due to societal and cultural definitions) creates problems in determining effective ways to reintegrate and rehabilitate child soldiers¹³⁸.

Some children are able to simply reunite with their families, ask for forgiveness and life resumes, but for many, their families do not exist anymore. A fair number of these child soldiers had gruesome initiation ceremonies where they were forced to kill members of their family to show loyalty to the guerrilla group. The choice was often kill your family or we will kill you. That was the surface reason anyway. The real reason that many group members called for these actions was to destroy any desire in the children to run away and go home. If their families, were not willing to accept them and the community looked down upon them, the children were much less likely to try to leave the group. However now that many of these conflicts have ended, the

¹³⁸ Van Bueren, Geraldine. "The International Legal Protection of Children in Armed Conflicts." *The International and Comparative Law Quarterly* 43, no. 4 (1994): 809-26.
<http://www.jstor.org/stable/761002>. Pg. 823

international community faces the daunting task of figuring out how to reintegrate thousands upon thousands of displaced child soldiers. Some wish to build rehabilitation centers while others advocate letting the communities purify the children as they see fit. To date there is no consensus in the international community about the best method to help these child ex-combatants resume their daily lives.

Disarmament, Demobilization and Reintegration

One of the first courses of action by the UN was the implementation of the DDR. DDR stands for disarmament, demobilization, and reintegration. In the disarmament phase, the ex-combatants, including the child soldiers are told to give up their arms. To make the process a little easier, the weapons are traded in for cash. In the demobilization phase ex combatants are essentially taken to rehabilitation center, reunited with their families, and taken back to their communities. The purpose of demobilization is to drop ex-child soldiers in a place that would make it easier for them to resume civilian life. However, many of these programs excluded soldiers who were under the legal age for recruitment, focused exclusively on males and assumed that demobilized soldiers could simply go back to intact families and communities, which for most was not actually the case¹³⁹. The last phase, reintegration, was simply an active effort by the governments and NGOs to provide economic and financial incentives as well as social support to ensure ease of integration back into society. On paper DDR programs sound amazing. In reality they were a nightmare to fully implement and only a few around the world have had any kind of success.

¹³⁹ Honwana, *Child Soldiers in Africa*, 136-137

Rehabilitation Centers

The governments of some countries with the help of the international community decided to try building rehabilitation centers to help young combatants. Mozambique and Sri Lanka are two countries that took on this endeavor. Mozambique's government in 1987 passed an amnesty law to help fleeing RENAMO (Mozambican National Resistance) combatants. There was a rehabilitation center called the Lhanguene Rehabilitation Center created to accommodate those children who benefited from the amnesty law¹⁴⁰. Most who wound up in the center were aged 6 to 16 years¹⁴¹. All of them came from terrible backgrounds where they were abducted into RENAMO, trained as combatants and often forced to kill other individuals¹⁴². Many of them had either been able to escape from the camps or were liberated thanks to demilitarization. The purpose of the center was to provide the children with "psychological and sociological assistance"¹⁴³ however the program was highly unsuccessful. The children refused to open up about their experiences to the care givers and in the end the NGO decided to shift gears and focus their efforts instead on reunifying the boys with their families and communities and the center was shut down.

Just as in Mozambique, the use of child soldiers was rampant in Sri Lanka courtesy of the rebel group Liberation Tigers of Tamil Eelam. This group has one of the highest recruitment rates of child soldiers around the world. Some, like Professor Rajiva Wijesinha describe the phenomenon as a "baby brigade"¹⁴⁴. UNICEF released data saying that there were almost "6183 cases of Child recruitment by the LTTE" even after the February 2002 Ceasefire Agreement had

¹⁴⁰ Ibid, 138

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Wijesinha, Rajiva. "Child Soldiers in Sri Lanka and Their Rehabilitation - The LTTE Use of Child Soldiers." *The Children and Armed Conflict Unit*, May 19, 2008. Accessed November 26, 2016. https://www.essex.ac.uk/armedcon/story_id/000804.html.

been reached¹⁴⁵. Unfortunately, while these numbers appear to be on the high end of the spectrum, there were most likely more cases of recruited child soldiers than what the UNICEF data was able to display. Even so after the ceasefire agreement had been made UNICEF as well as the Sri Lankan government took the LTTE at its word and tried to rehabilitate former child soldiers. UNICEF especially did its level best to “advocate against child recruitment” and tried to get the LTTE to “honor their commitments to cease recruitment and release all child soldiers”¹⁴⁶. However, the NGO did not get the outcome it desired. Still UNICEF did not give up. The LTTE eventually agreed to a rehabilitation and reintegration plan only if “the main implementing agency was an NGO” by the name of “the Tamil Rehabilitation Organization” (TRO) and did not involve the Government of Sri Lanka at all¹⁴⁷. Feeling slightly more at ease UNICEF along with the TRO set up a rehabilitation center otherwise known as a transit center in Kilinochchi. The transit center ended up being open only for a few months because despite being maintaining a 24 hour presence “with both national and international staff...no children were released to the center”¹⁴⁸. UNICEF also had plans to open up rehabilitation centers in Batticaloa and Trincomalee that never came into fruition. Although later on between 2004 and 2005, the Kilinochchi center was reopened and used to rehabilitate “17 boys and 22 girls” for approximately “13 weeks”, the UNICEF/TRO transit centers were as unsuccessful in their intended mission as was the rehabilitation center in Mozambique¹⁴⁹. The only difference was that in Mozambique the reason was the children not sharing while in Sri Lanka it was the children who were not shared.

¹⁴⁵ Ibid

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ Ibid

There are however some rehabilitation centers that were successful such as the ones in Sierra Leone. As opposed to rehabilitation centers, they were called “interim care centers” instead¹⁵⁰. These centers were used for children who for some reason or the other did not or could not go back to their families. These centers were managed by one of the child protection NGOs and were usually a good distance away from the demobilization sites¹⁵¹. According to John Williamson, approximately 5038 child soldiers received care from the centers successfully before they were closed¹⁵². These centers later went on to become the main location for tracking down surviving family members, as well as helping ex child soldiers and non-combatant children alike slowly reintegrate back into their communities.

Reunification and Community Tradition

One of the main goals of NGOs and humanitarian organizations everywhere is reunification of children with their loved ones. In Angola around 9,133 ex-child combatants were under the age of 15 and were reunited with either their families or returned to their pre-war communities¹⁵³. In the Democratic Republic of Congo thanks to the International Committee of the Red Cross by 2014, 800 ex-child combatants had been returned home with 30 of them being reunited with families in other countries¹⁵⁴. In Sierra Leone 6845 children were demobilized and

¹⁵⁰ Williamson, John. "The Disarmament, Demobilization and Reintegration of Child Soldiers: Social and Psychological Transformation in Sierra Leone." *Intervention* 4, no. 3 (November 2006): 185-205. December 12, 2015. Accessed November 26, 2016.
doi:10.1097/wtf.0b013e328011a7fb, 188

¹⁵¹ Ibid

¹⁵² Ibid, 189

¹⁵³ Honwana, Child Soldiers in Africa, 140

¹⁵⁴ Mullins, KJ. "Child Soldiers Reunited with Families." *Digital Journal*, January 10, 2015. Accessed November 26, 2016.

98% of them were reunited with one or both parents¹⁵⁵. While efforts at reunification are admirable, they are also quite expensive and can be life threatening operations. Many family reunifications have to be done using airplanes and helicopters¹⁵⁶. In that case there is a possibility that the emergency vehicles could be shot down or that “military incursions” could suddenly break out in locations meant for reunification¹⁵⁷. Additionally, there is a risk that even if an ex child combatant’s family is found, they are unwilling to take the child back into their community and their home. The first attempt to rehabilitate these children takes place in the rehabilitation centers, however some academics suggest that a better course of action would be to let the communities use traditional practices to reintegrate the children instead of pursuing western psychological approaches like the ones in the rehabilitation centers. Scholars like Honwana believe that culture plays a central role in diagnosis and treatment of disorders and distress like the ones “arising from wartime experiences of wartime and loss”¹⁵⁸. In her view, western “biomedical and psychotherapeutic notions of distress and trauma” cannot be effectively employed in African countries because the cultural implications of mental health with the local cultural beliefs and views¹⁵⁹.

Honwana is not alone in her assertion that the west does not fully understand the context in which mental health problems can be discussed in non-western societies. There are many humanitarian and aid organizations that have stressed the importance of tradition in family and community integration. Traditional practices can include cleansing ceremonies, community rituals, honoring ancestral spirits, and settling unquiet spirits of the dead. Many societies believe

¹⁵⁵ Williamson, pg. 187 - 189

¹⁵⁶ Honwana, pg. 139

¹⁵⁷ Ibid

¹⁵⁸ Ibid, pg.150

¹⁵⁹ Ibid, pg. 150

that the children who have been surrounded by constant bloodshed and war are now polluted¹⁶⁰. These polluted individuals are seen as “potential contaminants” to the whole society¹⁶¹. So for the protection of the community “against the evils of war” and to help free the polluted individuals from their contamination that can lead to mental illnesses as well as death, cleansing ceremonies are of the utmost importance¹⁶². At the very least they put the community in charge of their own fate and allow them to put their minds to rest once the rituals are over.

In rural communities of states like Angola and Mozambique, people are of the opinion that individuals who cross group boundaries become socially contaminated¹⁶³. One example of crossing group boundaries is civil war. Often times this kind of warfare involves blurring the lines between children and soldiers as well as moving in on the territory of others. Therefore, community rituals are performed by all members of a group in order to rid themselves of the possibility of social pollution.

Ancestral rituals were said to be done in order to receive protection. Unfortunately, in times of war, there were plenty of relatives who died without getting proper burials and rites done for them. Many times the ex-child soldiers would be required to perform said rituals for the family in order to quiet the spirits. On the other hand if relatives did not know whether someone had passed or mistakenly heard they had and performed the ritual, then in places like Mozambique and Angola, if for example it was the child soldier who had been declared dead, the ritual would have to be undone before they could be reintegrated into society and meet their family members¹⁶⁴.

¹⁶⁰ Ibid, pg. 133

¹⁶¹ Ibid

¹⁶² Ibid

¹⁶³ Ibid, pg. 125

¹⁶⁴ Ibid, pg. 125

In terms of settling the unquiet spirits of the dead, many in the rural villages of Africa do not believe that life can go on until the spirits have been quieted. There are reported cases of harassment from these spirits¹⁶⁵. It is possible that the child soldiers are unable to return to their homes and communities until the spirits have been satisfied and given proper burials for otherwise they can disturb the peace of the people in the place they haunt thereby rendering the community less forgiving of the child soldier, especially if he or she is labeled as the cause of discontent.

Overall ceremonial rituals and cleansings are reported to increase community acceptance of the children returning from war. There was a longitudinal study done in Mozambique that found that “traditional cleansing rituals” played a major role in the successful reintegration process of ex-child combatants¹⁶⁶. It said that the participation of the children in these communal traditions led to a building up of trust that was necessary for the former child soldiers to be accepted back into the society¹⁶⁷.

NGO Initiatives and Ground Work

In addition to helping implement rehabilitation centers and providing aid, most NGOs also do a lot of ground work to not only try to help re-civilize the child soldiers but also make the community feel more at ease with them around. These organizations will often use the word “sensitization” in order to refer to the reasoning behind the programs they implement¹⁶⁸. It is “used by most UN, NGO, and government bodies in Sierra Leone and refers to community awareness raising, but also implies social marketing”¹⁶⁹. Sensitization is used in regard to reintegration when

¹⁶⁵ Ibid, pg. 131

¹⁶⁶ Williamson, pg. 196

¹⁶⁷ Ibid

¹⁶⁸ Shepler, pg. 200

¹⁶⁹ Ibid

referring to child soldiers. It is meant to help the communities better understand the conditions in which the child soldiers survived. Local communities often have trouble seeing how brutalized the child soldiers were and how many human rights abuses they suffered because child soldiers were often the perpetrators of community violence in the insurgencies. Many of them were responsible for destroying agriculture and displacing many individuals¹⁷⁰.

The NGOs have to work twice as hard to convince the communities that because of the ages of the children and their experiences, they should not be held responsible for their crimes and that they have the right to be allowed to live and socialize with their family members again¹⁷¹. The NGOs assumed that the reason people were not able to understand child's rights was because they were ignorant and simply needed to be educated¹⁷². Therefore much of their efforts went into not only educating the children in schools to make up for education they had lost during their time in war but also educating the surrounding communities through "community sensitization programs"¹⁷³. Because of the work of the local NGOs in Sierra Leone, more and more of the younger population has begun to invoke their rights as children to things such as education.

However, this emphasis on children's rights has led to tension and worry amongst the older Sierra Leoneans. While the concept of taking care of children is not new, in traditional societies such as the one in Sierra Leone, Shepler emphasizes that the idea of saying that "children have a right to be treated well, regardless of circumstance or behavior" is new¹⁷⁴. The locals worry that if

¹⁷⁰ Rivard, Lysanne. "Child Soldiers and Disarmament, Demobilization and Reintegration Programs: The Universalism of Children's Rights vs. Cultural Relativism Debate." *The Journal of Humanitarian Assistance*, August 23, 2010. Accessed May 1, 2017. <https://sites.tufts.edu/jha/archives/772>.

¹⁷¹ Shepler, pg. 200- 201

¹⁷² Ibid, pg. 201

¹⁷³ Ibid, pg. 201

¹⁷⁴ Ibid, pg. 205

children are made aware of the rights they possess, they will become disrespectful and demand, “for example, education, without any of the requisite responsibilities to the parents and the rest of the family”¹⁷⁵. Essentially they are worried that children will forget their place in society and they will invert the social hierarchy of the community, just as had been done when the child soldiers used guns and weapons to bring adults to their knees. This provides a key example of the differences between the western image of childhood, and a non-traditional image of a child childhood.

Besides formal education for the kids such as reading and writing, and community sensitization programs for the adults in the surrounding communities, NGOs have also tried to take on the psychological effects that affect the former child soldiers. Unfortunately, there has been little success due to the diversity of responses and the debate over center based approaches versus community based approaches. Not to mention the fact that while people who deal with attending to psychosocial issues can agree on a definition of psychosocial, “the ways they operationalize the concept vary widely”¹⁷⁶.

¹⁷⁵ Ibid

¹⁷⁶ Russell, Lorea, and Elzbieta M. Gozdzia. "Coming Home Whole: Reintegrating Uganda's Child Soldiers." *Georgetown Journal of International Affairs* 7, no. 2 (2006): 57-65. 61.

STRATEGIES FOR IMPROVING THE CONVENTION ON THE RIGHTS OF THE CHILD

The old challenge the international community was faced with was creating a document that would address the problems affecting children all over the world, especially those involved in armed conflict. The new challenge is finding a way to make sure that international humanitarian law is understood, recognized and enforced in countries where children are recruited by non-state actors on a regular basis¹⁷⁷. Most scholars studying the plight of the child soldiers focus their discussion on the United Nations Convention on the Rights of the Child (CRC) because this document is the most acknowledged and the highest ratified international document concerning children. Scholars like Jo de Berry, Abhinaya Ramesh, and Alcinda Honwana, point out specific problem areas of the CRC and outline ways in which it can be improved to better target the problem of child soldiers.

One of the most prominent criticisms of the CRC is that it tries to offer a universal solution to a highly complex region specific problem. In order to understand how to apply the CRC to specific areas rife with child soldiers, it is important to first understand the social relations prevalent in that area. Social relations are not destroyed by war, rather they change. It is this change in social relations that influence children to participate in armed conflict. For example, Jo de Berry, a research fellow in the center for Child-focused Anthropological Research at Brunel University, gives an example of such social relations by analyzing the involvement of the Teso youth of Kenya in the Uganda People's Army (UPA). In Iteso Society, the young Teso men would get the cattle necessary to marry from their fathers¹⁷⁸. However, the Karamojong tribe raided the area and stole

¹⁷⁷ Honwana, pg. 39

¹⁷⁸ De Berry, Jo. "Child Soldiers and the Convention on the Rights of the Child." *The Annals of the American Academy of Political and Social Science* 575 (2001): 92-105.
<http://www.jstor.org/stable/1049182>. pg. 102

a great majority of the cattle in the area. The boys who were used to their father giving them cattle were now being told that they had to find a way to acquire the wealth themselves in order to marry. Many of the Teso youth saw joining the UPA as a way to regain prosperity for themselves and their region. Therefore, the heart of the problem in this area is that another tribe disrupted the community stability of the Teso people. If the CRC was to move “from its position of universal idealism to practical implementation” by the state parties in conjunction with the international community, the CRC would be better equipped to engage with local contexts ¹⁷⁹. If it was better equipped to engage at a local level, the CRC may have more success at addressing the main issue and developing models of peace that would discourage the Teso youth from enlisting in the UPA.

Abhinaya Ramesh takes de Berry’s argument for a more regionalized CRC a step further by advocating the need to set up national committees on the rights of the child in each country, especially those dealing with child soldiers, in order to tackle region specific problems¹⁸⁰. From 1991 to 2001, the CRC had a single committee made up of 10 elected experts from countries whose governments had chosen to ratify the CRC. Since the 2003 elections, however, there are now 18 elected experts in the committee. Although they come from different countries, they are not to act as a representative of their respective governments. Instead they are meant to perform their CRC committee duties without bias to any government or organization they may be privy to. However, some scholars like Ramesh do not believe that the committee members can remain truly unbiased towards their country’s policies¹⁸¹. After all, each of the representatives is elected, making it unlikely that countries would choose candidates who disagreed with their policy slants. Either way, the candidates are held accountable for the millions of children that the CRC applies to and their

¹⁷⁹ De Berry, pg. 102

¹⁸⁰ Ramesh, pg. 1950

¹⁸¹ Ramesh, pg. 1949

duties include receiving, evaluating, and advising on how to improve the implementation of the CRC dependent on the state reports submitted by each country that has ratified the document. Now the fact that there are almost 200 countries that have ratified this document and that there are multiple rights encompassed in the CRC makes it very difficult for the committee members to target one specific country's issues. As mentioned previously many of these countries have not yet submitted even their first report or if they have they have a tendency to embellish to make themselves sound uncritical, or provide an inadequate amount of information making it challenging to understand the entire situation of children's rights in the area¹⁸². There is also a significant difference in the kinds of problems affecting children in developed nations as opposed to developing nations. In developed countries problems with children include "child poverty, drug and alcohol dependency, and teenage suicide" whereas problems of children in developing countries are more along the lines of child soldiers born out of challenges such as "non-development [and] unstable political power"¹⁸³. The specific children's rights that are being violated are so diverse that the committee's attention becomes too divided to provide effective support to every country that requires it. If national committees are set up that can analyze the situation in each country and report back the results, the caseload on the international committee will be significantly reduced and allow them to develop much more targeted solutions to specific countries.

Alcinda Honowana lays out her argument for improvements in the CRC by first commending the work one by the international community. She agrees with humanitarian organizations that are pushing for a straight 18 positions, meaning making it illegal to recruit

¹⁸² Ramesh, pg. 1950

¹⁸³ Ibid

individuals under the age of 18 into any armed force because she believes that this will help alleviate any confusion surrounding the voluntary and forced recruitment. At the moment however, the central challenge surrounding child soldiers is finding a way to ensure that international humanitarian law is not only understood, but also recognized and enforced in places where the use of child soldiers in armed conflict is a daily occurrence. If there was more of a focus on public acceptance and enforcement rather than arguments over the definition of a child, childhood, and the age at which children could enter armed conflict, eradication of child soldiers would be made a slightly less burdensome issue. She takes issue with the fact that so many of the conventions and protocols are voluntary and non-binding and only work when people come together to make the protection of children a political priority. She believes that the language needs to be firmer and there needs to be a greater interaction between international and local understandings of children, child's rights, and conflict in war ravaged areas.

CONCLUSION

Child soldiers are not a new phenomenon. From the children's crusades of 1212 to Napoleon's French army, to the Chinese red army, children as young as 8 years old to as old as 17 have taken part in armed conflict. At the moment there are almost 300,000 children involved in combat today. Previously children were a part of formal, recognizable militias that were associated with specific countries. The militias that child soldiers are in now are not formally recognized state armies but rather rebel insurgencies that make use of mostly guerrilla tactics to incite fear and violence in the civilian populations. The international community has come together to create a set of documents that aim to eradicate the problem of child soldiers. The issue however is that many of these documents are based on a one sided view of children's rights.

In the west, children are entitled to a certain set of rights, such as life, survival, freedom, race, religion, and gender and childhood is defined by age. In more traditional societies the concept of children's rights is a new phenomenon and the end of childhood is not defined by age but rather by factors such as responsibilities, marriage, and coming of age ceremonies. The fact that there is a fundamental difference in how the west views childhood and how more traditional societies view childhood lends itself to the idea that childhood is a social construct.

There are numerous nongovernmental organizations and humanitarian organizations that appear to disagree with this view. For most, anyone under the age of 18 is a child and children cannot make decisions in their best interests. Many of these organizations hesitate in entertaining the idea that children are at times not forcibly coerced into joining guerilla groups and insurgencies. These groups instead put more effort into trying to absolve all child soldiers of all responsibility instead of trying to distinguish the perpetrators from the victims. In allowing all children to walk away, they make it more difficult for the children's families and communities to accept them back,

complicating the reintegration process. While the west may believe every child has a right to be loved and care for, not all traditional societies believe it to be so. Unfortunately, most international documents concerned with children overwhelmingly reflect the humanitarian narrative.

While the international community has come together to create multiple documents targeting children's rights and take special care to talk about child soldiers, the three most important documents are the Universal Declaration of the Rights of the Child, the United Nations Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The UDRC was the first document to address children's rights in a targeted way on an international scale. However, it was nonbinding and simply listed out all the rights a child was entitled to. The second document is the CRC. This was the most ratified instrument of international law with almost 190 countries adopting it. The only country that has not adopted the CRC is the United states on account of the supremacy clause. This document has two defining features. The first is that it explicitly states that all governing entities who choose to ratify the document must make the interests of the child their highest priority and it states that any individual under the age of 18 is a child. It also set up a committee of 18 people whose sole purpose is to ensure that the CRC is implemented effectively in every governing committee. However, the implementation process has been difficult namely because many of the countries have not done their part in submitting annual reports. Without these reports, the committee is unable to understand the situation of children in specific areas and make recommendations to improve the conditions of children accordingly. The third most important document is the Optional Protocol to the CRC. This document deals with the age requirement for recruitment. There was a debate over whether 15 or 18 should be the official age for recruitment into the military. NGOs and humanitarian organizations were vehemently against 15 being the age

while countries such as the US, UK, and Australia wished for it to be 15 so that individuals in their countries who wanted to enlist could begin training early. After a six-year debate, a committee decided that voluntary recruitment could happen at 15 and forced recruitment was to be at 18. This document was stronger than the previous two because it addressed both state and non-state actors however it was made the responsibility of the states to ensure compliance of this protocol.

Alongside the question of child soldiers was the question of accountability. Some believe that children should not be prosecuted as a form of accountability and some do. International humanitarian organizations and NGOs are hesitant to allow the prosecution of child soldiers because they do not believe any child under the age of 18 can have enough agency to make decisions in their best interests. Additionally, according to many psychologists there exists a variance of psychological development in kids aged 10-15 making it difficult for the international criminal court to set a lower limit on the age of prosecution for a child who has committed an international crime. Children also have a dual identity as both victims and perpetrators, and while they may commit murders they often lack the malicious intent.

However, those who believe children should be prosecuted state that, international humanitarian law does not explicitly outlaw the prosecution of children and in fact there is a precedent for prosecution in some domestic systems. There are also documented instances of children who have not been forcibly coerced into joining regional insurgencies such as in Sri Lanka, Mozambique, and Nepal.

Once child soldiers are removed from armed conflict, the international documents state that it is the responsibility of the states to handle the reintegration process for the child soldiers. Many of these states however are war torn and unable to handle that pressure and lack the funds and manpower to handle such an endeavor. Additionally, while Some children can go back to their

families, ask for forgiveness and resume their lives, for some, these families and communities do not exist. There is currently an ongoing discussion about the best form of rehabilitation where success is defined by how many individuals are reintegrated back into their communities. The three most common forms of reintegration are rehabilitation centers, through reunification and education by humanitarian organizations and NGOs, and through letting communities handle the reintegration after reunification. Each of these endeavors has met with varying success but none is overly successful because childhood is defined differently in the local communities. It is difficult for many of them to reintegrate the children back into their societies because they have seen the destruction brought about by these children.

In the end the Western definition of childhood severely limits the effectiveness of international documents with respect to prosecution and rehabilitation of child soldiers. The international community needs to realize that the problems of advanced European and western societies are different from the needs of developing states. Many scholars have proposed making the language of documents like the CRC stronger, adding repercussions in the case of non-compliance, and reworking the documents to allow for the creation of national committees on the rights of the child to more effectively deal with regional problems like the child soldier phenomena.

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